



May 28, 2019

**Via ECFS**

Ms. Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*  
(WC Docket No. 18-141)

Dear Ms. Dortch:

On May 23, 2019, the undersigned, along with Frank Simone, AT&T; Jeff Lanning, CenturyLink; Katharine Saunders and Fred Moacdieh, Verizon; A.J. Burton, Frontier; and Patrick Brogan, USTelecom (“USTelecom representatives”), met separately with Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly, Jamie Susskind, Chief of Staff to Commissioner Carr, and Randy Clarke, Acting Legal Advisor for Wireline and Public Safety to Commissioner Starks<sup>1</sup> in support of USTelecom’s Petition for Forbearance.<sup>2</sup> A subset of the same group met with Travis Litman for the same purpose on May 24, 2019.<sup>3</sup>

During the meeting, the USTelecom representatives reiterated that consumers will not lose access to voice or broadband service as a result of the Commission granting forbearance from network unbundling and ILEC-specific resale requirements. First, USTelecom members have committed to making available commercial alternative or replacement services for those locations that are presently served via UNEs.<sup>4</sup> Plainly put: removing a UNE does not mean removing a facility; it means only that the pricing for that facility will reflect market realities and not an artificial regulatory construct. Second, the transition will not be abrupt: USTelecom has already committed to keeping existing UNEs in place until February 4, 2021 – nearly three years after the petition was filed. Third, to address any concerns about service in rural areas that lack multiple competitors, USTelecom recently submitted a detailed proposal for the Commission to limit relief at this time to areas subject to facilities-based competition (voice and broadband at a

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<sup>1</sup> Jeff Lanning was not present for the meeting with Ms. Roth.

<sup>2</sup> See generally Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141, at iv, 24-25 (filed May 4, 2018) (“Petition”).

<sup>3</sup> Katharine Saunders and Jeff Lanning were not present for the meeting with Mr. Litman.

<sup>4</sup> See, e.g., Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, (filed Feb. 21, 2019).

minimum of 25/3 Mbps).<sup>5</sup> In other words, the only areas where a UNE would not be available would be in areas already served by a facilities-based competitor that was able to deploy voice and broadband service without reliance on UNEs. There is no need for a “bridge to broadband”<sup>6</sup> when the bridge has already been built.

The USTelecom representatives explained that the Commission must consider what is best for competition, not for individual competitors. Those opposing the Petition assert that if the Commission grants forbearance, a particular CLEC might pay more for its inputs than it does today. But this is not the relevant inquiry. Notably, no CLEC has identified any specific markets they would be forced to exit following grant of forbearance. Thus, their real complaint is not that consumers will be harmed, but that the CLECs might incur higher costs if forced to pay market-based rates for their inputs. The unbundling regime is not meant to guard CLEC profits. It is only meant to facilitate the introduction of competition. Ultimately, any claim that UNEs are essential to competition (as opposed to the needs of particular competitors) is belied by the fact that the vast majority of competitive connections (well over 90 percent) do not rely on UNEs at all. Competition without UNEs is not only possible – it is the overwhelming norm.

We further explained that while USTelecom has articulated the need for more accurate Form 477 data in the universal service context as the Commission embarks on the next phase of the CAF, reliance on FCC Form 477 census block data is more than adequate for assessing the presence and feasibility of competition for last-mile facilities without reliance on UNEs. The Commission expressly held as much in the *BDS Order*: “Form 477 broadband service availability data necessarily imply the presence of broadband-capable cable network facilities, which makes it an ideal dataset to ensure the competitive market test accounts for competition from cable operators.”<sup>7</sup> Importantly, we explained that cable-served census blocks are significantly smaller and denser than average. The mean area of a cable-served census block is 0.9 square miles and the median is 0.008 square miles.<sup>8</sup> Thus, if a cable operator has deployed facilities in a census block, it is a highly reliable indicator that competitive facilities are generally available or deployable throughout the census block. In those cases, there is no justification for maintaining network unbundling requirements.

Additionally, we explained that the facilities used to provide TDM transport services are identical to the facilities that ILECs use to provide transport UNEs. Moreover, the functionality is the same, whether transport is purchased as a UNE or as BDS. Accordingly, the

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<sup>5</sup> See Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 6, 2019) (“May 6 Ex Parte Letter”) (indicating that 90 percent of housing units and 90 percent of the population in the United States are in census blocks served by cable).

<sup>6</sup> <https://www.bridge2broadband.org>.

<sup>7</sup> *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3507 ¶ 106 (2017).

<sup>8</sup> Declaration of Glenn Woroch and Robert Calzaretta, WC Docket 18-141 (May 6, 2019), attached to May 6 Ex Parte Letter.

Commission's factual findings regarding TDM transport are equally applicable to transport UNEs.

Finally, for the reasons articulated in the May 6 Ex Parte Letter, we explained that if the Commission were to grant partial relief along the lines described above, doing so would be wholly within the scope of the Commission's legal authority and would not in any way conflict with the framework governing forbearance requests.<sup>9</sup>

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley

Patrick R. Halley  
Senior Vice President, Advocacy and  
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USTelecom—The Broadband Association

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<sup>9</sup> See May 6 Ex Parte Letter at Section II.